

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 14 APO-ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO:FCT/HC/CR/3B/14

COURT CLERK: JOSEPH BALAMI ISHAKU & ORS

DATED: 17/01/17

BETWEEN:

FEDERAL REPUBLIC OF NIGERIACOMPLAINANT

AND

UMAR BUKAR A.DEFENDANT

JUDGMENT

The charge preferred against the Defendant is dated and filed on the 25/02/15. It is a two count charge of impersonation and attempt to defraud or obtain money under false pretence. It states:

COUNT ONE:

“That you Umar Bukar Alibe sometime on 21st August 2011 at Abuja, within the Abuja Judicial Division of the High Court of the Federal Capital Territory pretended to be an operative of the Economic and Financial Crime Commission (EFCC) and demanded One Million Naira (N1,000,000:00) from one DR PRECIOUS GBENEOL a former Hon. Secretary Heath and Human Service Secretariat Abuja as bribe to cover or do away with a Petition against her with the EFCC when you knew you are not an EFCC operative and thereby

committed an offence punishable under Section 132 of the Penal Code”.

COUNT TWO:

“That you UMAR BUKAR ALIBE sometime on 21st August 2011, at Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory with intent to defraud attempted to obtain money from one DR PRECIOUS GBENEOL a former Hon. Secretary Health and Human Service Secretariat, Abuja under the false pretence that you are an operative of the Economic and Financial Crime Commission (EFCC) assigned to investigate a case of fraud against her and thereby committed an offence contrary to Section 8(a) of the Advance Fee Fraud and Other Related Offences Act, 2006 and punishable under Section 1(3) of the same Act”.

The two count charge was read to the Defendant and he pleaded **NOT GUILTY** to all the Counts. The Prosecution opened his case and called two witnesses in proof thereof. The first Prosecution Witness is Ebello Friday. He stated that his office is situate at 5 Formella Cresent, Wuse II, Abuja. That he works at the EFCC as an Operative. That he is attached to the Advance Fee Fraud Section as Head of Advance Fee Fraud Team 2. That he knows the Defendant. Following a Petition dated 28/08/11 signed by Dr Precious Gbeneol to the effect that certain persons who referred to themselves as Eagle Eyes sent her a text message alleging that certain Petitions transferred from ICPC to EFCC relating to her tenure as Secretary Health FCT. That she should pay the sum of N1 Million to GTB Account bearing the Defendant’s name. She asked them to contact her lawyer because she has just been defrauded. That the team wrote a letter of investigation activities dated

2/09/11 to GTBank requesting for Statement of Account opening package which includes mandate card, know your customers form and means of identification. They also requested that post no debit be placed on the Account and the ATM card deactivated. That the team be contacted when the Defendant shows up. The Defendant was subsequently arrested in Gombe on 27/09/12. His Statement was recorded under caution by the Officer who conveyed him to Abuja.

When he arrived he asked him of the Eagles Eye syndicate but he denied knowing anything about it. He admitted the Account Number and name belonging to him. He issued a word of caution, read it to him he said he understood and he volunteered a Statement voluntarily in writing. In the course of his Statement, he made reference to Abu Gwagwada which he gave his Account Number to. He was given time to produce him but till date, he could not produce him. The Petition written by Mrs. Precious Gbenoil dated 26/08/11 is Exhibit A. The Reply from GTBank which was minuted to the Witness is Exhibit B. The Statement of the Defendant obtained under caution dated 27/08/12 and 29/08/12 are Exhibits C and C1.

The team was informed by the Nominal Complainant that the Defendant sent her a text message. The Defendant was asked to produce the phone he was using but he insisted he misplaced it and did a welcome back. They went to their Forensic Unit and discovered that the old text messages were deleted. They discovered that there was no Abu Gwagwada.

Under Cross Examination, the Witness said they wrote to MTN to investigate the Phone Number. That the analysis shows the phone frequents the North East, Borno and Adamawa. That the sim card was not registered. There was a text

message between the Syndicate and the Nominal Complainant. He was not able to produce the said Abu Gwagwada. He later said he was late. He was not able to produce his Death Certificate when asked to do so. He had told us he was his bosom friend. That there was a direct complaint against the Defendant. The Defendant first said he was a member of Special Force but later begged them. To another question, he answered that they did not believe that he had any bosom friend called Abu Gwagwada. The team also visited the residence of the Defendant.

The second Prosecution Witness is Precious Gbeneol. She stated that she works in the Medical Centre of River State University of Education Rumuolumeni. That she has been working in the said Centre since 2000. That she got an appointment as Secretary of Health in the FCT from 2009 to 2011. That she took a leave of absence from the University. That she was seeing the Defendant for the first time. She does not know him. That during investigation, his picture was shown to her. That in 2011, she got a text message on her phone by Eagle Eye stating there were about 6 to 8 Petitions written to ICPC against her which were transferred to EFCC but now assigned to him. That he has verified the Petitions and that if she wants the case closed, she should pay the sum of N1 Million to his Account in GTBank which he sends to her. That he called himself UMAR BUKAR. She refused to pay the money because few months back another person came up with a similar story. That she contacted a Deputy Commissioner of Police Mr Dan Bature at the Force Headquarters who advised her to go to EFCC. She made the Complaint and left. The EFCC later called to inform her that they had located the Account Number and the picture of the owner. She could not recognise the picture because, it was blurred.

Under Cross Examination, the Witness answered that during her tenure, she did not personally award contract but her office does. That it is the Procurement Department which carries out the procedure. The Minister authorises the processes and the Company that wins is awarded the contract. That she did not perform any of the functions. To another question, she answered that she saw one of those who pretended to be EFCC Staff by name Gabriel Charles Olugbenga. That her Phone Number which the text message was sent is 0803400416. That she still has the phone but do not have the text. That she spoke to the Defendant on phone. It was a male voice. She insists she is seeing the Defendant for the first time. That she did not make any payment to the Account but made payment to the other person Gabriel Charles Olugbenga. She did not believe that there were Petitions against her. The above is the case of the Prosecution.

The Defendant opened his defence and gave evidence for himself. He is Umar Bukar Alibe. He lives in Guduwa Estate. He is a Business Man. He stated that the allegations agsinst him are not true. That he is from Maiduguri, Borno State. That he has a friend Abu Gwagwada. That after his graduation, he was posted to Lagos for his NYSC and served in Dangote. That Abu Gwagwada accommodated him for 6 months around Adeniji Adele. He resigned in 2007 and ventured into business in Abuja. He set up a Company called Haman and Amina. That in 2011 Abu Gwagwada called him on phone to pick him up in Abuja and he did stating he was on transit to Maiduguri. He is his childhood friend. He asked him of his Account details because his wife delivered his 2nd child. He thought he wanted to send him money. That days after he called him to find out if he received any alert and he responded negatively. He said he was expecting money. After two days, the call continued persistently. Witness called to find out how much he was expecting. He opted to give him a cheque pending the time the money would be

paid but he declined. He thereafter failed to call for two weeks. He also failed to call until, he called apologising that he forwarded his Account details to fraudsters. He was upset. He asked him to withdraw his monies or stop using the Account. That for two years he did not use the Account. In 2012, in Gombe during Sallah he gave a cheque of N45,000 to a driver to cash for him to fuel his car. When he did not see him after two to three hours, he went to the bank in company of his friend's younger brother. He was arrested and taken to the Regional Office of the EFCC Gombe. They took his Statement, impounded his car and detained him for 10 days before transferring him to Abuja. He was given bail and given time to trace Abu Gwagwada. He went to Lagos and Maiduguri despite the insurgency. That after two weeks he got him. There were no Policemen around. That he called PW1 that he had seen him but he said there was no personnel on ground. That if he likes he should put him in his pocket. That where he got him was a flash point area. That he told soldiers on road block but PW1 said there was no personnel. The soldiers said they cannot detain him for more than 24 hours. He ran to the ward head. They brought him and called the father. There was an agreement that he would follow him the following day. He gave him transport fare to come to Abuja the following day. He met PW1 at Abuja. That he fulfilled his own part of the agreement but PW1 refused. He was later charged to Court. He does not know the Nominal Complainant. That his phone was taken for forensic analysis, it was negative. That he never pretended to be an EFCC Officer.

Under Cross-examination, he answered that he is a qualified Engineer. That he operates a GTBank Account. That he abandoned the Account for about two years before he issued the cheque. He was not sure why he demanded the Account Number.

Parties were ordered to file Final Written Address. The Prosecution Final Written Address is dated 28/09/16. Learned Counsel to the Prosecution adopted the said Written Address as his oral argument. The Defendant also adopted his Final Written Address dated and filed on the 19/09/16. The sole issue raised by both parties for determination is whether or not the Prosecution has proved the Charge against the Defendant beyond reasonable doubt. It is the Prosecution's case that the Defendant personated a public servant i.e an Operative of the Economic and Financial Crime Commission. That from the evidence adduced by PW2 the Defendant acted falsely or that at best he knew that he did not hold the office in question. That it can be circumstantially deduced that even though the text message could no longer be produced but that the Account Number and Name could be linked to the Defendant. That the link which exist is the GTBank Account Number and Name of the Defendant.

Learned Prosecuting Counsel further submits that there are no contradictions or conflict in the evidence of the two Prosecution Witnesses. The Prosecution's evidence supports a conviction as it leads to only one conclusion that an offence of impersonation was committed and that it was committed by the Defendant. Learned Counsel to the Prosecution also canvasses that from the evidence the offence of an attempt to obtain money under false pretence was committed by the Defendant. That there was a physical act by the Defendant sufficiently proximate to the complete act. The Prosecution contends that the acts of the Defendant clearly point to one conclusion, that the Defendant committed the offence of an attempt to obtain money under false pretence. He finally submits that the Prosecution has been able to discharge its burden of proving the two count Charge. He urges the Court to find the Defendant guilty and convict him accordingly.

The Learned Counsel to the Defendant on the other hand submits that the Prosecution has not proved its case beyond reasonable doubt to warrant the conviction of the Defendant. Learned Counsel to the Defendant canvasses that the testimony of PW1 has not been able to link the Defendant to the crime. That no ingredient of the offence of impersonation has been proved. That PW1 is not a Witness of truth. That from the PW1's testimony, it is apparent that the Charge against the Defendant is based on suspicion. That acts that are merely preparatory to the commission of the offence are not sufficiently proximate to constitute an offence. That the evidence does not link the Defendant with the crime alleged. That the ingredients of the offences under which the Defendant was charged were not proved. He finally urges the Court to discharge and acquit the Defendant. It is the burden of the Prosecution in criminal trials such as this to establish the guilt of the Defendant beyond reasonable doubt by virtue of Section 135 of the Evidence Act.

In Criminal Proceedings such as in this case, the Defendant is constitutionally presumed innocent until the contrary is proved by the Prosecution. The onus of proof is on the Prosecution and it does not shift.

See **BELLO VS. STATE (2007) 10 NWLR (PT. 1043) 564.**

IGABELE VS. STATE (2006) 6 NWLR (PT. 978) 100 SC.

In our criminal jurisprudence there is no question of a Defendant proving his innocence before a Court of law. The Defendant is charged under Section 132 of the Penal Code and Section 8(a) of the Advance Fee Fraud and Other Related Offences Act 2006. Section 132 of the Penal Code states:

“Whoever pretends to hold any particular office as a public servant knowing that he does not hold such office or falsely

personates any other person holding such office and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment for a term which may extend to three years or with fine or with both”.

Section 8(a) of the Advance Fee Fraud and Other Related Offences Act states:

“A person who conspires with aids, abets or counsels any other person to commit an offence or...”

The first count is that the Defendant pretended to be an Operative of the EFCC and demanded One Million Naira from PW2 DR PRECIOUS GBENEOL a former Hon. Secretary Health and Human Service Secretariat as bribe to cover or do away with a Petition against her. The evidence of PW2, the Nominal Complainant is that she got a text on her phone saying that the person calling her is Eagle Eye and that there are 6 to 8 Petitions transferred to EFCC under his care. That he has verified the Petitions and that if she wants the case closed, she should pay N1 Million to his Account. He supplied the Account Number and the Name of the Defendant as the Account Name. She agreed under cross-examination that she still has the phone to which the text message was sent. That she does not have the text. She confirmed she had not seen the Defendant until that day in Court. That EFCC showed her the picture of the Defendant with name attached and she said she had not seen him before.

From the evidence above, the person who sent the purported text to PW2 introduced himself as eagle eye. He purportedly has 6 to 8 Petitions written against PW2 the Nominal Complainant to the EFCC under his custody. The evidence of PW1 is a rehearsal of Exhibit A the PW2’s Petition except that

investigation activities were carried out. Therefore the crux of the pretence is contained in the text message which was sent to the PW2. The said text message was not availed the Court. Even though she said under cross-examination, she still had the phone but later said she changed phones. There is no evidence that she supplied the investigation authorities a copy of the text message she allegedly received from the eagle eye which contained the GTB Account Number and Name of the Defendant. When the Defendant was arrested, he made Exhibits C – C1. He mentioned the name of one Abu Gwagwada in Exhibit C1. No investigation was carried out in that regard to determine the authenticity of the Defendant's story rather the responsibility was shifted to the Defendant to bring the said Abu Gwagwada. The Defendant agreed the Account Name and the GTB Account Number belongs to him but that he gave same to Abu Gwagwada who requested for same. The evidence of the Prosecution did not link the Defendant with the alleged text message. The telephone Number from which the text emanated was not traced to the Defendant. It was said not to have been registered. Aside the Account Number and Name, there is nothing linking the Defendant to Count One.

It is still our law that in Criminal trials the onus is still on the Prosecution to prove same beyond reasonable doubt. From the totality of the evidence before me, I cannot with all confidence come to a conclusion that the Prosecution has proved its case beyond reasonable doubt. There is no question of a Defendant proving his innocence before a law Court as society will want the Courts to adjudge at this trying times. In the circumstance, Count I, fails.

Count II is an attempt to obtain money from PW2 Dr Precious Gbeneol under false pretence that he is an Operative of the EFCC. The Section under which the Charge is brought does not create any offence. Section 1(3) is a punishment Section for

offences created under Section 1(1) and (2) of the Advance Fee Fraud and Other Fraud Related offences Act 2006. The Charge is therefore bad. Aside the above, there is no material before me to suggest that the Defendant attempted to obtain money from PW2, the Nominal Complainant under false pretence. The text message allegedly sent to make the demand is not before the Court. There is no evidence of the link between the text message and the owner of the phone which sent the text. The admission of the Defendant that the GTBank Account Number and Name is his is not enough to establish the offence for which the Defendant is charged.

The Prosecution in my humble view has also failed to prove Count II of the Charge beyond reasonable doubt. For the totality of reasons given, the Prosecution has failed to prove the Charge beyond reasonable doubt. The Charge fails and it is dismissed.

The Defendant is accordingly discharged and acquitted.

**HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)
17/01/17**